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E-File: November 17, 2009

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Attorneys for Debtors and
Debtors in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes, et al.,¹
Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:

☐ All Debtors
☒ Affects the following Debtor(s):

Apache Framing, LLC 09-14818

Hearing Date: December 17, 2009
Hearing Time: 9:30 a.m.
Courtroom 1

¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-

**DEBTORS' OBJECTION TO DANIEL BRENNAN'S CLAIM PURSUANT TO
SECTION 502(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 3003
AND 3007 (BOOKS & RECORDS CLAIM); DECLARATION OF PAUL D. HUYGENS
IN SUPPORT THEREOF**

Pursuant to section 502(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 3003 and 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby object (the "Objection") to the claim (the "Books & Records Claim") of Daniel Brennan ("Mr. Brennan"), attached hereto as **Exhibit A**, because the Debtors' books and records indicate that no sums are owing. The Debtors request the entry of an order (the "Order") disallowing and expunging in full the Books & Records Claim.² In support of this Objection, the Debtors rely on the *Declaration of Paul D. Huygens in Support of Debtors' Objection to Daniel Brennan's Claim [Books & Records Claim]*. In further support of this Objection, the Debtors respectfully represent as follows:

BACKGROUND

1. On March 31, 2009, the above-captioned Debtors (the "Primary Filers"), except Tuscany Golf Country Club, LLC, Pinnacle Grading, LLC, and Rhodes Homes Arizona, LLC (the "Secondary Filers"), filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. On April 1, 2009, the Secondary Filers filed voluntary petitions for relief

14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

² The Debtors reserve the right to file additional objections, whether on substantive or non-substantive grounds, to any and all other claims filed against their estates.

1 under chapter 11 of the Bankruptcy Code. All references to Petition Date herein shall mean
2 March 31, 2009 for the Primary Filers or April 1, 2009 for the Secondary Filers, as applicable.

3 2. The Debtors are continuing in possession of their property and are operating and
4 managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the
5 Bankruptcy Code.

6 **RELIEF REQUESTED**

7 3. By this Objection, the Debtors seek entry of an order, pursuant to section 502(b)
8 of the Bankruptcy Code and Bankruptcy Rules 3003 and 3007, disallowing and expunging in
9 full the Books & Records Claim.

10 **OBJECTION**

11 4. The Books and Records Claim is for an alleged mortgage note. The Debtors are
12 not engaged in the business of mortgage lending, and have no such obligation to Mr. Brennan,
13 as indicated by the Debtors' books and records. Furthermore, Mr. Brennan failed to provide
14 any documentation to support his claim against the Debtors. Therefore, the Debtors believe that
15 the Books & Records Claim is invalid and should be disallowed and expunged in full by the
16 Court.

17 5. Bankruptcy Code section 502 authorizes a party in interest to object to claims.
18 *See* 11 U.S.C. §502(a). Upon such objection, this Court, "after notice and a hearing, shall
19 determine the amount of such claim in lawful currency of the United States as of the date of the
20 filing of the petition" 11 U.S.C. § 502(b). Although a proper proof of claim is presumed
21 valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the
22 creditor has the ultimate burden of persuasion as to the validity and amount of the claim.
23 *Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222,
24 226 (B.A.P. 9th Cir. 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (quoting *In re Allegheny*
25 *International, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). The Bankruptcy Appellate Panel for
26 the Ninth Circuit explained the shifting burdens of proof with respect to objection to proofs of
27 claim as follows:
28

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The burden of proof for claims brought in the bankruptcy court under 11 U.S.C.A. § 502(a) rests on different parties at different times. Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is “prima facie” valid. In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant’s initial obligation to go forward. . . . The burden of persuasion is always on the claimant.

Id. (emphasis added). Following this decision, the District Court for the Northern District of California emphasized, “unless the claimant has alleged ‘facts sufficient to support a legal liability, ‘the claim is not prima facie valid.’” *In re Hongnisto*, 293 B.R. 45, 50 (N.D. Cal. 2003) (quoting *Consolidated Pioneer Mortg.*, 178 B.R. at 266) (holding that the claimant’s proof of claim failed to allege sufficient facts to support a legal liability and consequently disallowed the proof of claim); *see Consolidated Pioneer Mortg.*, 178 B.R. at 227 (holding that because the proof of claim did not allege sufficient facts to support the claim, the proof of claim was disallowed).

6. Based on the Debtors’ review of their books and records and the proof of claim filed by Mr. Brennan, the Debtors believe that the Books & Records Claim should be disallowed and expunged in full by the Court.

CONCLUSION

7. The Debtors object to the allowance of the Books & Records Claim for the reasons stated herein, and the Debtors hereby move this Court for an Order disallowing and expunging in full the Books & Records Claim identified as the proof of claim attached hereto as **Exhibit A.**

NOTICE

8. Notice of this objection has been provided to (i) the United States Trustee for the District of Nevada, (ii) counsel to the Creditors’ Committee, (iii) the claimant to whose claim the Debtors are objecting in this Objection in accordance with the address provided in the proof

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1 of claim for such Books & Records Claim, (iv) each person or entity that has filed a notice of
2 appearance and request for special notice, and (v) other required parties pursuant to the Court's
3 case management order entered in these cases. The Debtors submit that in light of the nature of
4 the relief requested herein, no other or further notice is required.

5 9. Pursuant to Bankruptcy Rule 3007, the Debtors have provided the claimant
6 affected by the Objection with at least thirty (30) days' notice of the hearing on the Objection.

7 WHEREFORE, the Debtors respectfully request that the Court enter an Order,
8 substantially in the form attached hereto as **Exhibit B**, disallowing and expunging in full the
9 Books & Records Claim attached as **Exhibit A**, and granting such other and further relief as the
10 Court deems just and proper under the circumstances of these chapter 11 cases.

11 **DATED** this 17th day of November, 2009.

12 **LARSON & STEPHENS**

13 /s/ Zachariah Larson, Esq.
14 Zachariah Larson, Bar No. 7787
15 Kyle O. Stephens, Bar No. 7928
16 810 S. Casino Center Blvd., Suite 104
17 Las Vegas, NV 89101
18 702/382-1170
19 Attorneys for Debtors and Debtors in
20 Possession
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**DECLARATION OF PAUL D. HUYGENS IN SUPPORT OF DEBTORS' OBJECTION
TO DANIEL BRENNAN'S CLAIM [BOOKS & RECORDS CLAIM]**

I, Paul D. Huygens, declare as follows:

1. I am the Senior Vice President of Special Projects of the above-captioned debtors and debtors in possession (the "Debtors"). The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify thereto.

2. This declaration is submitted in support of the *Debtors' Objection to Daniel Brennan's Claim [Books & Records Claim]* (the "Objection").

3. I am one of the persons responsible for overseeing the claims reconciliation and objection process in the Debtors' chapter 11 cases. I have read the Debtors' Objection and am directly, or by and through my personnel or agents, familiar with the information contained therein, the exhibits attached thereto, and the proposed form of order.

4. Daniel Brennan's claim was carefully reviewed and analyzed in good faith, and the Debtors' books and records were referenced for additional support, utilizing due diligence by appropriate personnel of the Debtors. These efforts have resulted in the identification of the disputed "Books & Records Claim," identified as the proof of claim attached hereto as **Exhibit A**. I have personally reviewed the Books & Records Claim.

5. The Books and Records Claim is for an alleged mortgage note. The Debtors are not engaged in the business of mortgage lending, and have no such obligation to Mr. Brennan, as demonstrated by the Debtors' books and records. Furthermore, Mr. Brennan failed to provide any documentation to support his claim against the Debtors. As a result, I believe the Books & Records Claim should be disallowed and expunged in full by the Court.

6. I believe that granting the relief requested in the Objection is in the best interests of the Debtors, their estates and their creditors.

///

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1 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true
2 and correct to the best of my knowledge, information, and belief.

3 Executed this 17th day of November, 2009, at Las Vegas, Nevada.

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5 /s/ Paul D. Huygens

6 Paul D. Huygens
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EXHIBIT A

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B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor: APACHE FRAMING, LLC		Case Number: _____
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): DANIEL BRENNAN		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: DANIEL BRENNAN 531-2 WILLOW ROAD EAST STATEN ISLAND, NEW YORK 10314		
Telephone number: 347-284-8443		
Name and address where payment should be sent (if different from above): (SAME AS ABOVE)		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number: _____		
1. Amount of Claim as of Date Case Filed: \$ 200,000 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: MORTGAGE NOTE (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: 8162 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ 200,000 Annual Interest Rate 6 1/2% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 6/1/09 Signature: <i>Daniel Brennan</i> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.		FOR COURT USE ONLY FILED JUN 10 2009 <small>By: Omni Management Group, Claims Agent For U.S. Bankruptcy Court District of Nevada</small>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 1519, 1542

FRI-20607 0978-2 pdf959 09-14818
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037765 37765 1 MB 0.369 10314 9 5 6221-1-38114



Daniel Brennan
531 Willow Rd E No 2
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91436

Heritage Land Company, LLC
c/o Omni Management Group, LLC
16161 Ventura Blvd. Suite C
PMB 477
Encino, California 91436

RECEIVED
JUN 09 2009
BY: 91436



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



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91436 REQUESTED

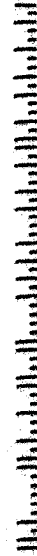


EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,¹

Debtors.

Case No.: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

Affects:

- ☐ All Debtors
☒ Affects the following Debtor(s):

Apache Framing, LLC 09-14818

Hearing Date: December 17, 2009
Hearing Time: 9:30 a.m.
Courtroom 1

ORDER SUSTAINING DEBTORS' OBJECTION TO DANIEL BRENNAN'S
CLAIM PURSUANT TO SECTION 502(b) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 3003 AND 3007 [BOOKS & RECORDS CLAIM]
[DOCKET NO.]

¹ The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

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Upon consideration of *Debtors' Objection to Daniel Brennan's Claim Pursuant to Section 502(b) of the Bankruptcy Code and Bankruptcy Rules 3003 and 3007 [Books & Records Claim]* [Docket No. ____] (the "Objection"),² filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"), requesting that the Court enter an order disallowing and expunging in full the disputed claim; and the Court having jurisdiction to consider the Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Objection; the Court hereby finds and determines that, pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, due and proper notice has been provided to the holder of the claim attached as Exhibit A to the Objection and all other parties entitled to notice; and no other or further notice is necessary; and the relief requested in the Objection is in the best interests of the Debtors, their estates and creditors; and that the legal and factual bases set forth in the Objection establishes just cause for the relief requested therein; therefore

IT IS HEREBY ORDERED THAT:

1. Claim number 5 of Daniel Brennan in the amount of \$200,000.00, filed against Apache Framing, LLC is hereby disallowed and expunged in full.
2. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

APPROVED/DISAPPROVED:

DATED this ____ day of December, 2009.

By: _____
 UNITED STATES TRUSTEE
 August B. Landis
 Office of the United States Trustee
 300 Las Vegas Blvd. S., Ste. 4300
 Las Vegas, NV 89101

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

1 Submitted by:

2 DATED this 17th day of December, 2009.

3 By: /s/ Zachariah Larson

4 LARSON & STEPHENS

5 Zachariah Larson, Esq. (NV Bar No 7787)

6 Kyle O. Stephens, Esq. (NV Bar No. 7928)

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11 zlarson@lslawnv.com

12 *Attorneys for Debtors*

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LR 9021 Certification

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

___ The court has waived the requirement of approval under LR 9021.

___ No parties appeared or filed written objections, and there is no trustee appointed in the case.

___ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below.

Submitted by:

DATED this 17th day of December 2009.

By: /s/ Zachariah Larson

LARSON & STEPHENS

Zachariah Larson, Esq. (NV Bar No 7787)

Kyle O. Stephens, Esq. (NV Bar No. 7928)

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